

General Information Letter: The throwback rule does not apply to sales of services.

July 15, 2003

Dear:

This is in response to your letter dated June 13, 2003, in which you request information. Department of Revenue (“**Department**”) regulations require that the Department issue only two types of letter rulings, Private Letter Rulings (“**PLRs**”) and General Information Letters (“**GILs**”). **PLRs** are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A **PLR** is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the **PLR** are correct and complete. **GILs** do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department’s website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

The nature of your correspondence and the information provided require that we respond only with a **GIL**.

In your letter you state in part as follows:

Our client whom I will identify as Company 03-F has retained COMPANY to determine the state tax consequences for income tax purposes of the following fact pattern. Company 03-F’s issues center around your states application of the throwback rule.

#### Facts

Company 03-F compiles credit data from various sources and maintains a database to store this information at its facilities located in State X. All of Company 03-F’s databases, servers, software and other computer equipment are located in State X. In addition, all technical support staff and other employees hired to maintain the database are located in State X.

Company 03-F sells the information contained in its database to customers that are located both within and outside your state. Typical customers are financial institutions and apartment complexes that use the information to determine the credit worthiness of applicants.

Company 03-F contracts with its customers to provide credit researching services that are developed as original information for a specific customer. Company 03-F’s customers usually go to the company’s web site and download credit reports on specific applicants. Customers may also print a copy of the credit report if necessary for their files.

Approximately 93% of the company’s revenue is generated through online information services provided to customers that subscribe to Company 03-F’s database. A small percentage of revenue, approximately 7%, is derived from Customer Support services

wherein installation and other onsite services are provided that exceed solicitation activities protected under Public Law 86-272.

The company believes that state income/franchise tax nexus is created in your state due to activities that exceed solicitation protected under Public Law 86-272.

In the past, the company sourced all online information service revenues to State X based on the Uniform Division of Income for Tax Purposes Act (UDITPA) where the greatest cost of performance is located. The remaining revenue from installation services etc... was sourced to your state.

Company 03-F plans to move its online information service operations that includes its database and corresponding support personnel to State Y. This will make State Y the location where the greatest cost of performance will be located. Due to the movement of its operations, Company 03-F's activities will exceed the protections of Public Law 86-272. However, State Y does not impose an income or franchise tax. Conversely, your state imposes a throwback rule for sales of tangible personal property.

#### Issues

1. Does your state's throwback rule apply to services?
2. If yes, does the UDITPA rule take precedence over the throwback rule?
3. Can your state's throwback rule apply when the other state (State Y) does not impose an income or franchise tax so that Company 03-F is prevented from filing a return?

Company 03-F desires to be a good corporate taxpayer and respectfully asks that you answer the above questions in writing using citations to support your conclusions.

In response to your inquiries, please be advised as follows:

With regards to Question #1, Illinois' throwback rule does not apply to sales of services. Illinois has separate and distinct rules for attributing business income from sales of tangible personal property [Illinois Income Tax Act (IITA) 304(a)(3)(B)], intangible personal property [IITA 304(a)(3)(B-1)], and sales of services [IITA 304(a)(3)(C)], and the regulations promulgated thereunder. The throwback rule only applies to sales of tangible personal property. We enclose herewith a copy of Ill. Reg. Section 100.3370, which, at subsection (c)(3), details the attribution rules for business income earned from the sale of services.

As to Questions #2 and 3, see the reply to Question #1.

As stated above, this is a **GIL** which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a **PLR** which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 *Ill. Adm. Code Part 1200*.

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Sincerely yours,

Jackson E. Donley,  
Senior Counsel-Income Tax